

Art Unit: 1654

DETAILED ACTION

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/31/11 has been entered.

Claims 18-28 and 30 are under examination.

Response to Amendments/Arguments

Applicant's arguments and amendments filed 5/31/11 are acknowledged and have been fully considered. Any rejection and/or objection not specifically addressed is herein withdrawn.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

Art Unit: 1654

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 18-28 and 30 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 3, 4, 5, 9, and 10 of USPN 7,741,453. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant claims are drawn to a complex of formula I: wherein Av is AV is WMEWDREINNYTSLIHSLIEESQNQQEKNEQELL, linkers, and Pr is human serum albumin (HSA), wherein the complex possesses antiviral activity. The '453 patent discloses a compound of formula I-VIII that includes the WMEWDREINNYTSLIHSLIEESQNQQEKNEQELL peptide, linker, and albumin that inhibit viral activity (HIV, HPV or MeV).

Applicant's arguments were fully considered but were not found persuasive. Applicant contends that U.S. patent application 10/478,811 has not been allowed, so a terminal disclaimer would be premature. However, the examiner contends that U.S. patent application 10/478,811 has matured into USPN 7,741,453. Therefore, a terminal disclaimer is requested at this time.

Conclusion

All claims are rejected.

Art Unit: 1654

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROY TELLER whose telephone number is (571)272-0971. The examiner can normally be reached on Monday-Friday from 5:30 am to 2:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cecilia Tsang, can be reached on 571-272-0562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Roy Teller/
Examiner-1654